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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ

W.P. No. 702 of 2006

PETITIONER M/s Jayesh Auto Parts & Steels Pvt. Ltd., Through :- Director Surendra Sharma S/o Shri Vinod Sharma, Factory Address : Plot No. 24, C.S.I.D.C., Phase – II, SILTARA INDUSTRIAL GROWTH CENTRE SILTARA, Dist : Raipur (C.G.)

VERSUS

RESPONDENTS:

1. Central Bank of India
   Through – Senior Manager
   Branch – HADAPSAR PUNE – 411013 (A body corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act No.V of 1970, having its Central Office at "Chander Mukhi", Nariman Point, Bombay – 400 021, and acting through Sr. Manager of its above branch office at HADAPSAR PUNE – 411 013
2. The Manager, Main Branch
   Central Bank of India, Raipur (C.G.)
   Appointed Receiver
3. Shri Satyan Jagtap
   Advocate Pune, (Court Commissioner appointed)
4. Presiding Officer,
   Debt Recovery Tribunal
   Pune (M.S.)

Present: Shri Prateek , learned counsel for the petitioner.

Shri Prashant Mishra, learned Sr. Advocate with Shri S.R.J. Jaiswal, learned counsel for respondents No. 1 & 2.

ORAL ORDER
(Passed on 12th October 2006)

Having heard learned counsel for the parties, I am not inclined to entertain this writ petition for more than one reason. In this writ petition

filed under Articles 226 and 227 of the Constitution of India, the petitioner is seeking quashing of the order dated 03-01-2006 marked and produced as Annexure P/1, passed by the learned Debt Recovery Tribunal (for short "The DRT"), Pune in O.A. No. 99 of 2004, rejecting the petitioner's prayer for restoration of possession, which in turn arose out of the order dated 26-09-2005, a copy which is produced and marked as Annexure P/2.

(2) There is no need for me to refer to the facts of this case in detail, inasmuch as the DRT in great elaboration has setout the relevant facts leading to the impugned order, in the impugned order itself.

(3) The primary contention before this Court as urged by Shri Prateek Sharma, learned counsel for the petitioner is that the DRT, Pune utterly lacks jurisdiction to attach the subject properties and to appoint receiver to manage the said properties. At the threshold, it needs to be noticed that the petitioner subjected itself to the jurisdiction of the DRT, Pune and filed its objections and prayed the DRT to restore possession of the subject machineries which were in the custody of the receiver appointed by the DRT. The jurisdictional issue as could be seen from the impugned order was not urged before the DRT. What was urged before the DRT is that the subject machineries which are found in the premise of the petitioner's factory in Raipur, are their own properties and not the hypothecated properties. The DRT having considered that precise question recorded its finding in para 10, thus :

> "10. The authorised person of the objector company claims to be the Director of the objector company and acquainted with the facts of the case. The photograph was shown to him which shows that the

Board of his company was found in the premises of the defendant company. This in my opinion is not a trifle circumstance to be turned a blind eye to. He has admitted that he has no independent source of income when the company was formed. The company consists of himself and his sister, thereafter, other Directors joined, who are his brothers-in-law. According to him, the company had Rs. 6-7 Lakhs at it's disposal beyond share-capital and he did not have any independent source to purchase the shares at relevant time. According to him, the money was raised from unsecured creditors, however, he is unable to give their names. So far as the allotment of land is concerned it can hardly to be disputed in view of the documents of Chhattisgarh State Development Corporation Limited. The core question is whether the objector can prove the ownership of the machinery found at site. According to him, the entire machinery is described in Sr. No. 1 to 10 of his application, however he cannot tell whether company maintains it's Stock Register. He admits that the company does not maintain Register mentioning number of machines, its make, price etc. Most of the documents which are produced on record are the invoices or orders. The alleged cash payment has not been shown in any Books of Accounts. According to him, the machinery is purchased on "as is where is basis". He admits that he does not have receipt regarding payment of some of the items. The photograph shows that the machinery is huge and logic rebels and reasons revolts to conceive that the machinery would be without any description such as make or serial number. There are no corresponding entries in any document to show purchase of machine. Sellers have not filed their Affidavit, therefore, on mere invoices and orders it is difficult to conclude that reconditioned machinery is purchased by the objector. The relation between the objector with the defendants

makes the cloud of suspicion thick. It is inconceivable that the details of machinery would not be found in the Stock Register of the company. The conclusion is, therefore, inescapable that the objector is making an attempt to claim the ownership of the machinery. The citus of the machinery is of no avail especially on the back drop of the fact that the applicant is contending that the hypothecated machinery was being stealthy moved by the defendant. The application, therefore, needs to be rejected as bereft of merits. Hence the following order.

ORDER

The application is rejected".

(4) The claim of the petitioner-Company that the subject properties / machineries are owned by and belong to the petitioner-Company is hotly contested by the Bank. It needs to be noticed that the power of this Court under Articles 226 and 227 of the Constitution of India cannot be invoked treating this Court as an Appellate Court seeking reappreciation of the evidence on record. The only thing to be seen by the Court is whether a factual finding recorded by a statutory authority or judicial forum is based on some legal evidence. I am satisfied that the reasons assigned by the DRT in para 10 of the impugned order would support its conclusion. Therefore, there is no ground to condemn the factual finding recorded by the DRT, Pune as the one suffering from the vice perversity.

(5) Be that as it may, there is absolutely no justification for the petitioner to rush to this Court under Articles 226 and 227 of the Constitution of India. As already pointed out *supra*, the petitioner subjected itself to the jurisdiction of the DRT, Pune and sought restoration of the attached properties which were lying in the custody of

the receiver appointed by the DRT, Pune. It is well settled that a party who submits himself to the jurisdiction of a Tribunal or an Authority without demur, at a later stage cannot be allowed to question jurisdiction of such Tribunal or Authority after a judgment or order made by it goes against him. It is not as if the petitioner is left with no remedy against the impugned order. An appeal lies under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). Under sub-Section (1) of Section 20 of the Act any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the Act, may prefer an appeal to an Appellate Tribunal having jurisdiction. The jurisdiction of the Appellate Tribunal cannot be equated to the jurisdiction of this Court. The Appellate Tribunal can have all the powers of the D.R.T. Looking from that angle also, the writ petition is liable to be dismissed in *limine*. I do not find any extraordinary situation or circumstance which could justify the petitioner to rush to this Court under Articles 226/227 of the Constitution of India without exhausting alternative, comprehensive and efficacious appeal remedy.

(6) In the result, the writ petition is dismissed, however, reserving liberty to the petitioner to workout legal remedy by way of appeal under Section 20 of the Act, if it is so advised. No costs.

Sd/-
Chief Justice

Kamole